THE HON'BLE SRI JUSTICE C.V. RAMULU

Monday, 12th day of March,2007

W.P.No.19747 of 2006

Between:-

National Insurance Company
Limited, represented by its
Regional Manager, Basheerbagh,
Hyderabad … Petitioner

and

Tagulla Jangaiah
and others … Respondents

THE HON'BLE SRI JUSTICE C.V. RAMULU

W.P.No.19747 of 2006

ORAL ORDER:

This Writ Petition is filed being aggrieved by an Order dated 20-6-2006 passed in I.A.No.30 of 2005 in W.C.No.192 of 2004 on the file of the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour-III, Hyderabad.

It appears, respondent Nos.1 to 4 filed a claim petition under Section 23 of the Workmen's Compensation Act in W.C.No.192 of 2004 before the Authority concerned. The National Insurance Company Limited, represented by its Regional Manager, Basheerbagh, Hyderabad was made a party-respondent. It is seen, a notice was served on the 2nd respondent in the W.C. i.e., the petitioner herein on 8-12-2004. However, on verification by the Regional Manager's Office, Basheerbagh, Hyderabad, it was found that the policy alleged to have covered the vehicle relates to Divisional Office No.2 at Secunderabad. By the time, the petitioner could trace the policy and engaged a counsel for the purpose of contesting the case in W.C.No.192 of 2004, it was decided *ex parte* on 30-5-2005 making the National Insurance Company Limited liable for payment of an amount of Rs.2,41,485/-. Aggrieved by the same, the Company filed I.A.No.30 of 2005 under Order IX Rule 13 and Section 151 of the Civil Procedure Code seeking to set aside the *ex parte* Award dated 30-5-2005 and for reopening of the W.C. After hearing both sides, the said application was dismissed. Challenging

the same, the present Writ Petition is filed.

Learned counsel for the petitioner states that an application under Order IX Rule 13 of CPC was filed stating that the Insurance policy number mentioned in the claim petition related to Divisional Office No.2 at Secunderabad, but the Regional Office, Hyderabad was shown as second opposite party in the W.C. The matter was entrusted to one Mr. Naresh Byrapaneni, Advocate and he informed that the insurance company was set *ex parte* and final order was passed on 30-5-2005. Further, the deceased was not covered by the policy and the insurer is not liable to pay any compensation. It was also pleaded that there was no wilful default on the part of the insurance company in not filing appearance and counter; therefore, prayed to set aside the Order dated 30-5-2005, reopen the case and permit the company to file Vakalat and counter.

Respondents/applicants filed a detailed counter stating that in spite of receiving notice from the Authority and reminders sent by their counsel, the second opposite party-petitioner herein did not appear before the Authority until passing the Award in the main claim petition. On the other hand, the first opposite party has appeared and contested the matter before the Authority. The second opposite party filed the present petition without perusing the entire record pertaining to W.C. and the Officer signed the affidavit has not declared in which Divisional Office he was working and from whom he received information about the claim application and when received the information, which clearly establishes that the second opposite party was grossly negligent for their non-appearance in the claim application and though ample time was granted, did not choose to contest the matter; therefore, the application is liable to be dismissed. The Authority, on consideration of the material on record, rightly held that

the notice was served on the petitioner herein on 8-12-2004 and the matter was adjourned number of times and thereafter, the Insurance Company was set *ex parte* on 18-3-2005 and as such, the second opposite party (petitioner herein) could not avail the opportunity to represent its case and there are no valid reasons for non-appearance of the petitioner herein on the said dates.

Heard both sides.

Learned counsel for the petitioner strenuously contended that the policy was taken in Chennai and it relates to Divisional Office No.2 at Secunderabad. Neither Chennai Office nor Divisional Office No.2 at Secunderabad was made a party in the W.C. On the other hand, the Regional Manager, Basheerbagh, Hyderabad was made a party, which has nothing to do with the case and by the time, the petitioner could find to which Office the policy relates to, *ex parte* Award was passed.

Whereas, learned counsel for the respondent-applicants states that the very Writ Petition is not maintainable. Petitioner having filed an application under Order IX Rule 13 of CPC, could have filed a regular Civil Revision Petition before this Court. In this regard, learned counsel for the petitioner relied upon a Judgment rendered by the Apex Court in **MOHANSINALI MERCHANT v. SHYAMLAL & OTHERS**[1], wherein it was held that under such circumstances, a Writ Petition is also maintainable.

Be that as it may, now it is not the Divisional Office No.2 at Secunderabad, which has filed the petition under Order IX Rule 13 of CPC, but it is the Regional Office, Basheerbagh, Hyderabad, which has filed the said petition. The fact that the notice was served at the Regional Office on 8-12-2004 is not in dispute. It is also not in dispute that the matter was called on by the Commissioner for Workmen's

Compensation (Authority concerned) on 16-12-2004, 29-12-2004, 10-1-2005, 10-2-2005, 18-2-2005, 3-3-2005 and 18-3-2005 and ultimately, the petitioner herein was set *ex parte* on 18-3-2005 and final award was made on 30-5-2005. It is understandable if the Regional Office is not interested in contesting the matter and it is the Divisional Office No.2 at Secunderabad, which is the proper party to the W.C. In fact, it is the Regional Office, which filed a petition under Order IX Rule 13 of CPC and further an Officer of the Divisional Office No.2 sworn to the affidavit filed before the Commissioner. Therefore, it cannot be said that the Regional Office has no information about it or it is not interested in it. Nothing prevented the Regional Office in engaging the counsel immediately after receipt of notice on 8-12-2004 and bringing the facts that the papers relating to this Policy are not available with them and it requires some more time for filing counter etc., to the notice of the Commissioner. On the other hand, Regional Office having received the notice on 8-12-2004 did not engage any counsel and the matter underwent several adjournments and ultimately the Regional Office, Hyderabad was set *ex parte* on 18-3-2005 and two months thereafter, the Award was passed in the W.C. Thereafter, the petitioner herein filed the present I.A.No.30 of 2005. Even in the affidavit filed in support of the said I.A., it is only stated that "the respondents 1 to 4 filed a case against this petitioner and another for compensation for the death of one 'Ushamma' caused in a motor vehicle accident. It is submitted that the number of the policy of insurance mentioned in the claim petition is related to the Divisional Office-II, Secunderabad, of the petitioner-company and the Regional Office, Hyderabad, was shown as the second opposite party. After receiving the information that the case is pending before this Hon'ble Court, the same is entrusted to Mr. Naresh Byrapaneni, Advocate. It is informed by our standing counsel

that this petitioner was set ex parte and final order was passed on 30-5-2005. It is submitted that the deceased is not covered under the policy of insurance and the insurer is not liable to pay any compensation; therefore, it is necessary for the petitioner to contest this case. There are no wilful defaults on the part of this petitioner/OP-2 in not filing the appearance and counter for contesting the case before this Hon'ble Court, except the reasons stated above. It is necessary for the petitioner/OP-2 to file the vakalat and counter and contest the case. Therefore, it is prayed, that the Hon'ble Court may be pleased to set aside the orders dated 30-05-2005 and reopen the case and permit the petitioner/OP-2 to file vakalat and counter and to contest the case and to pass such other necessary orders in the interest of justice."

In the circumstances, I am of the opinion that neither the Regional Office was diligent in engaging a counsel and pursuing the matter before the Authority nor after the Award was passed *ex parte.* As per the contention of the learned counsel for the petitioner Divisional Office No.2 at Secunderabad ought to have gone before the Authority for setting aside the *ex parte* Award, since it is the proper party. However, it is the Regional Office, which has gone before the Authority and filed a petition under Order IX Rule 13 of CPC. In the affidavit filed in support of the petition under Order IX Rule 13 of CPC, except stating that by the time they could find out where the policy was lying, the *ex parte* Award was made. No reasons are given and no dates are mentioned why the delay was caused in approaching the Commissioner. The explanation offered in the affidavit filed in support of I.A.No.30 of 2005 nor the arguments advanced before this Court would inspire the confidence of the Court to believe that the *ex parte* Award passed deserves to be set aside. I am of the opinion that the Authority has not committed any error in dismissing the application

filed by the petitioner seeking to set aside the Award dated 30-5-2005 passed in W.C.No.192 of 2004. The Writ Petition is devoid of any merit and is liable to be dismissed.

Accordingly, the Writ Petition is dismissed. No order as to costs.

12-3-2007

prk

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[1] 2000(9) SCC 734